In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 97

ALBERT J. DEMELLE, DOING BUSINESS AS CURLEY'S TRANSPORTATION COMPANY, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 26-30) is reported in 124 F. Supp. 514. The opinion of the court of appeals (R. 39-44, Pet. App. 5a-10a) is reported in 219 F. 2d 619.

JURISDICTION

The judgment of the court of appeals (R. 45, Pet. App. 11a) was entered on February 23, 1955. The petition for a writ of certiorari was filed on May 24,

1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether petitioner's certificate of public convenience and necessity authorizes it to serve certain points in the State of Maine.

STATUTE INVOLVED

The pertinent provisions of Part II of the Interstate Commerce Act, 49 Stat. 543, 49 U.S.C. 301 *et seq.*, are as follows:

> Sec. 203(a) (14): The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, * * *
>
> Sec. 206(a): Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations * * *.
>
> Sec. 222(b): If any motor carrier or broker operates in violation of any provision of this

part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

STATEMENT

Petitioner holds a motor carrier's "grandfather" certificate of public convenience and necessity which, insofar as here pertinent, authorizes it to carry general commodities over irregular routes "[b]etween points and places within 20 miles of Boston, Mass., Providence, R. I., and Sanford, Maine, except points and places in New Hampshire, and Lebanon, Berwick, and South Berwick, Maine, and points and places in Maine on and east of U.S. Highway 1" (Pet. App. 6a).

On May 25, 1954, the Interstate Commerce Com-

mission filed a complaint (R. 3-10) in the United States District Court for the District of Maine under Section 222(b) of the Interstate Commerce Act, seeking to enjoin petitioner from serving points not authorized by its certificate, namely, points in Maine on and east of U.S. Highway 1. Petitioner's answer (R. 11-13) admitted that it had served the points, but contended that its certificate authorized the service. The Commission moved for summary judgment (R. 17)[1] and the district court granted the motion and issued an injunction (R. 26-30). The court held (R. 28) that the phrase "points and places in Maine on and east of U. S. Highway 1" was not a grant of additional authority, as petitioner contended, but was, like "Lebanon, Berwick and South Berwick," an exception to the authority to serve points within 20 miles of Sanford.

On appeal, the Court of Appeals for the First Circuit unanimously affirmed (Pet. App. 5a-10a), holding (Pet. App. 9a) that the word "except" was intended to relate not only to "Lebanon, Berwick, and South Berwick, Maine," but also to points on and east of Route 1.

ARGUMENT

Contrary to petitioner's contention (Pet. 4-5; see Questions Presented, Pet. 2), this case presents no constitutional or statutory issues relating to revocation of certificates, but only the narrow question whether petitioner's certificate authorizes

[1] The parties stipulated that there was no issue as to any material fact (Pet. App. 7a).

it to serve points in Maine located on and east of U. S. Highway 1. We submit that the negative answer given to this question by the two lower courts is clearly correct, and that there is no reason for further review by this Court.

1. The court of appeals correctly held (Pet. App. 9a) that the phrase "points and places in Maine on and east of U.S. Highway 1" is not a grant of additional authority but, like "points and places in New Hampshire" and "Lebanon, Berwick, and South Berwick, Maine" is an "exception to the irregular route authority." Petitioner concedes (*ibid.*) that, although the word "except" does not occur before "Lebanon, Berwick, and South Berwick," the exception covers those points. There is no basis for petitioner's contention that the word "except" applies to the first two groups of points, but not to "points and places in Maine east of U. S. Highway 1." We submit that the court of appeals correctly concluded that the latter points are a further exception to petitioner's operating authority.

2. There is no merit to petitioner's contention (Pet. 2, 4-5) that the court, by construing the certificate as not authorizing service to points on and east of Route 1, has revoked petitioner's "grandfather" authority.[2] For this argument assumes that the certificate authorizes such service, whereas

[2] The argument that the court below interpreted the grant of the "Regular Route" as limiting the authority granted for the "Irregular Route" (Pet. 4) finds no apparent support in the opinion of the court. In fact the court specifically stated Pet. App. 6a): "* * * but we are not concerned with these regular routes in this case."

the fact is, as the court below held, that it does not. If petitioner had wished to offer evidence in the district court as to the scope of its grandfather operations, it could have done so instead of stipulating that there were no issues as to any material facts. The determination of the scope of existing authority obviously does not constitute a "rewriting" or a "revocation" (Pet. 4) of the certificate.

3. Petitioner's argument (Pet. 4-5) that the Commission cannot institute judicial proceedings to enjoin unauthorized operations unless it has first conducted a formal administrative investigation is equally untenable. Section 222(b) of the Interstate Commerce Act, under which this action was brought, contains no such requirement. On the contrary, it authorizes the Commission to apply to a United States district court for injunctive relief "[i]f any motor carrier * * * operates in violation of any provision of this part * * * or of any term or condition of any certificate * * *."

CONCLUSION

The decision below is correct, no important question of federal law is presented, and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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